

REMARKS/ARGUMENTS

Reconsideration and withdrawal of the rejections of the application are respectfully requested in view of the amendments and remarks herewith, which place the application into condition for allowance. The present amendment is being made to facilitate prosecution of the application.

I. STATUS OF THE CLAIMS AND FORMAL MATTERS

Claims 1-3 are currently pending. Claims 1 and 3, which are independent, are hereby amended. No new matter has been added. Support for this amendment is provided throughout the Specification as originally filed and specifically on page 33 (paragraphs [0118]-[0119] of the published Specification). It is submitted that these claims, as originally presented, were in full compliance with the requirements of 35 U.S.C. §112. Changes to claims are not made for the purpose of patentability within the meaning of 35 U.S.C. §101, §102, §103, or §112. Rather, these changes are made simply for clarification and to round out the scope of protection to which Applicant is entitled.

II. REJECTIONS UNDER 35 U.S.C. §112

Claims 1 and 3 are hereby amended, thereby obviating the rejections under 35 U.S.C. §112.

III. REJECTIONS UNDER 35 U.S.C. §103(a)

Claims 1-3 were rejected under 35 U.S.C. §103(a) as allegedly unpatentable over U.S. Publication No. 2001/0043795 to Wood et al. (hereinafter, merely "Wood") in view of U.S.

Patent No. 6,983,478 to Grauch (hereinafter, merely "Grauch") in view of U.S. Patent No. 7,167,895 to Connelly (hereinafter, merely "Connelly") in view of U.S. Patent No. 6,601,237 B1 to Ten Kate et al. (hereinafter, merely "Ten Kate") in view of U.S. Patent No. 6,782,551 to Entwistle (hereinafter, merely "Entwistle") and further in view of U.S. Patent No. 6,088,722 to Herz et al. (hereinafter, merely "Herz").

IV. RESPONSE TO REJECTIONS

Claim 1 recites, *inter alia*:

"...rescheduling means for rescheduling the exhibition of not viewed content, independently of the user's operation,

wherein the not viewed content is rescheduled repeatedly until it is viewed..." (Emphasis added)

As understood by Applicant, Entwistle relates to an improvement to a television system whereby programs which have already been viewed by a user and which are subsequently repeated are indicated such as by an indication on the screen or on the EPG thereby indicating to the viewer the repeat of a previously watched program which they can then decide relatively quickly to disregard.

As understood by Applicant, Herz relates to a system and method for controlling broadcast of and/or customer access to data such as video programs in accordance with objective profile data indicative of the customer's preferences for that data.

Applicant submits that neither Wood nor Grauch nor Connelly nor Ten Kate nor Entwistle nor Herz, taken alone or in combination, that would teach or suggest the above-identified features of claim 1. Specifically, none of the references used as a basis for rejection discloses rescheduling means for rescheduling the exhibition of not viewed content,

independently of the user's operation, and the not viewed content is rescheduled repeatedly until it is viewed, as recited in claim 1.

Firstly, the Office Action (see page 7) concedes that Wood, Grauch, Connelly, Ten Kate and Entwistle do not disclose an apparatus wherein viewed content is no longer scheduled, but asserts that Herz teaches the above mentioned feature, and refers to col. 41, lines 34-43, which is reproduced as follow:

“One skilled in the art will recognize that many additional variations on this technique are possible within the scope of the invention. For example, instead of a standard Euclidean distance metric, one may wish to use the inverse of the fraction of movies which were watched by both members of the pair. As another alternative, agreements can be normalized by the number of movies or shows the customer has seen. Also, customers who do not want to watch movies repeatedly may block the viewing of recently viewed movies to avoid repeat viewing.” (See, Herz, col. 41, lines 34-43)

However, Applicant submits that in the cited paragraph of Herz, “customers who do not want to watch movies repeatedly may block the viewing of recently viewed movies to avoid repeat viewing”. Thus, in Herz, the repeat viewing is avoided by the customers' operation of blocking the recently viewed movies.

In the present invention, the content management section 46 performs re-scheduling for the reproduction schedule table, and as shown in Fig. 11, with this operation, since the program H in the virtual channel 111-5 has not yet been viewed, it is deleted from the "past" and re-scheduled in the "future" (See, Specification, page 33, paragraphs [0118]-[0119]). Thus, in the present invention, the not viewed content is rescheduled **independently of the user's operation**.

Nothing has been found in Herz that teaches rescheduling means for rescheduling the exhibition of not viewed content, **independently of the user's operation**, as recited in claim

1.

Secondly, in the present invention, to ensure that not viewed content is viewed, the not viewed content is repeatedly rescheduled **until it is viewed** (See, Specification, page 34, paragraph [0124]). The Office Action (see page 7) asserts that Entwistle teaches repeatedly rescheduling content, however, nothing has been found in Entwistle that teaches the not viewed content is rescheduled repeatedly until it is viewed, as recited in claim 1.

Furthermore, this deficiency of Entwistle and Herz is not cured by the supplemental teaching of Wood, Grauch, Connelly and Ten Kate.

The Office Action proffers evidence of motivation as mere statements of the advantages of the claimed invention. Applicant submits that such assertions are merely hindsight and are not proper.

The Supreme Court in *KSR* has warned against the dangers hindsight reasoning. Applicants respectfully note that *KSR v. Teleflex* ("KSR") cautions that hindsight reasoning based on the Applicants' own disclosure (i.e., in the absence of facts gleaned from the prior art) distorts analysis: "[a] factfinder should be aware, of course, of the distortion caused by hindsight bias and must be cautious of arguments reliant on ex post reasoning." Emphasis added. As MPEP 2174 "Legal Concept of Prima Facie Obviousness" states:

[T]o reach a proper determination under 35 U.S.C. 103, the examiner must step backward in time and into the shoes worn by the hypothetical "person of ordinary skill in the art" when the invention was unknown and just before it was made. In view of all factual information, the examiner must then make a determination whether the claimed invention "as a whole" would have been obvious at that time to that person. **Knowledge of applicant's disclosure must be put aside in reaching this determination**, yet kept in mind in order to determine the "differences," conduct the search and evaluate the "subject matter as a whole" of the invention. **The tendency to resort to "hindsight" based upon applicant's disclosure is often difficult to avoid due to the very**

nature of the examination process. However, impermissible hindsight must be avoided and the legal conclusion must be reached on the basis of the facts gleaned from the prior art.
(Emphasis added)

Therefore, Applicant submits that independent claim 1 is patentable.

For reasons similar to those described above with regard to independent claim 1, independent claim 3 is also believed to be patentable.

V. DEPENDENT CLAIMS

The other claims in this application are each dependent from one of the independent claims discussed above and are therefore believed patentable for at least the same reasons. Since each dependent claim is also deemed to define an additional aspect of the invention, however, the individual reconsideration of the patentability of each on its own merits is respectfully requested.

Similarly, because Applicant maintains that all claims are allowable for at least the reasons presented hereinabove, in the interests of brevity, this response does not comment on each and every comment made by the Examiner in the Office Action. This should not be taken as acquiescence of the substance of those comments, and Applicant reserves the right to address such comments.

CONCLUSION


In the event the Examiner disagrees with any of statements appearing above with respect to the disclosure in the cited reference, it is respectfully requested that the Examiner specifically indicate those portions of the reference, providing the basis for a contrary view.

Please charge any additional fees that may be needed, and credit any overpayment, to our Deposit Account No. 50-0320.

In view of the foregoing amendments and remarks, it is believed that all of the claims in this application are patentable and Applicant respectfully requests early passage to issue of the present application.

Respectfully submitted,

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